

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF SCOTT

OCT 23 2009 A
SCOTT COUNTY COURTS

FIRST JUDICIAL DISTRICT
Case Type: Mechanic's Lien Foreclosure

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Wenzel Plumbing & Heating, Inc.,

Scott County Court File: 70-CV-08-12692

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

vs.

M.W. Johnson, Construction, Inc.;
Mesa Ty and Sopheary You; Mortgage
Electronic Registration Systems, Inc.,
as nominee for Bell America Mortgage,
LLC, d/b/a Bell Mortgage; Bernco, a
division of United Building Centers,
n/k/a Dee-Co Holdings, Inc.; XYZ
Corporation; ABC Partnership; John
Doe and Mary Roe, whose true names
are to the Plaintiff unknown,

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Wenzel Plumbing & Heating, Inc.'s ("Wenzel") Motion for Summary Judgment. Gary G. Fuchs, Esq. appeared on behalf of Wenzel. Steven R. Little, Esq. appeared on behalf of Defendants Mesa Ty ("Ty"), Sopheary You ("You") and Mortgage Electronic Registration Systems, Inc., as nominee for Bell America Mortgage, LLC, d/b/a Bell Mortgage ("MERS"). The Court, having been fully advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Dakota County, Minnesota, legally described as follows:

Lot 12, Block 4, Church 1st Addition, CIC 1156

(the "Property").

2. Wenzel entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Wenzel provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to Ty and You by way of a warranty deed dated July 25, 2007, recorded with the Scott County Recorder on August 7, 2007, as Document No. 779955. Ty and You are the current fee owners of the Property.

4. MERS is the holder of a mortgage dated July 27, 2007, secured by the Property, given by Ty and You, as mortgagors, in favor of MERS, as mortgagee, recorded with the Office of the Scott County Recorder on August 7, 2007, as Document No. 779956 ("MERS Mortgage").

5. Wenzel recorded a mechanic's lien statement against the Property dated August 14, 2007, in the original principal amount of \$1,950.00, which it recorded with the Office of the Scott County Recorder on August 17, 2007, as Document No. 780924 ("Wenzel's Mechanic's Lien Statement").

6. Wenzel recorded an amended mechanic's lien statement against the Property dated August 28, 2007, in the original principal amount of \$7,325.00, which it recorded with the Office of the Scott County Recorder on August 30, 2007, as Document No. 781852 ("Wenzel's Amended Mechanic's Lien Statement").

6. Wenzel's last item of improvement to the Property was June 22, 2007.

7. Wenzel commenced this action on May 29, 2008, within one year of its last item of improvement to the Property.

8. Wenzel's Mechanic's Lien is valid in the original principal amount of \$7,325.00 and is prior and superior to the rights, title and interests of Ty, You and MERS in the Property.

9. Defendant Bernco, a division of United Building Centers, k/k/a Dee-Co Holdings, Inc. ("Bernco") recorded a mechanic's lien statement against the Property dated October 10, 2007, recorded with the Office of the Scott County Recorder on October 12, 2007, as Document No. 785299 ("Bernco Mechanic's Lien Statement").

10. Bernco failed to answer Wenzel's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

11. More than one year has passed since the last item of improvement of September 13, 2007 that Bernco claimed it provided for the improvement to the Property as set forth in its Mechanic's Lien Statement.

CONCLUSIONS OF LAW

1. Wenzel is entitled to summary judgment.

2. Wenzel's Mechanic's Lien against the Property is valid and enforceable in the amount of \$7,325.00 in principal together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 667.27 through 10-20, 2009, which continues to accrue at the rate of \$.80 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 4565.29 and costs and disbursements in the amount of \$ 711.24 for a total judgment of \$ 13,268.80.

3. Wenzel's Mechanic's Lien is prior and superior in all respects to Ty's, You's and MERS's interests in the Property.

4. Bernco's Mechanic's Lien is expired and is void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.

5. Wenzel's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Scott County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.

6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Wenzel with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.

7. The sale shall be reported to and made subject to the approval of this Court. At that time, Wenzel may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

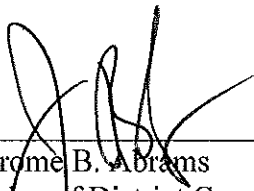
8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that Ty, You and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the MERS Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Wenzel's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Scott County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:

Dated: 10-21, 2009



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-08-12692

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 10-23-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY Audrey K Brown